

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
JONES COLLEGE)	EB-05-IH-0974
)	Facility ID No. 31936
Licensee of Noncommercial Educational Station)	NAL/Account No. 200932080019
WKTZ-FM, Jacksonville, Florida)	FRN 0001824077
)	

FORFEITURE ORDER

Adopted: July 31, 2009

Released: July 31, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we impose a monetary forfeiture of \$4,500 against Jones College (“Jones” or “Licensee”), licensee of noncommercial educational Station WKTZ-FM, Jacksonville, Florida (“Station”), for violating Section 399B of the Communications Act of 1934, as amended (the “Act”),¹ and Section 73.503(d) of the Commission’s Rules² by broadcasting advertisements over the Station.

II. BACKGROUND

2. This case arises from a complaint made to the Commission alleging that noncommercial educational Station WKTZ-FM had broadcast prohibited advertisements.³ Following the complaint, agency monitoring and recording of station broadcasts was conducted on July 2 and 9, 2005.⁴ Thereafter, the Enforcement Bureau (“Bureau”) inquired of the Licensee concerning these matters.⁵ Jones responded to the Bureau’s letter of inquiry (“LOI”) on December 1, 2005.⁶

3. On January 16, 2009, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”),⁷ finding that the Licensee had apparently violated the pertinent statute and Commission Rules,

¹ See 47 U.S.C. § 399b.

² See 47 C.F.R. § 73.503(d).

³ See Case Report, prepared by the Tampa Field Office, Enforcement Bureau, and dated September 19, 2005 (“*Field Office Report*”), at 2.

⁴ See *id.* at 2-3.

⁵ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Jones College, dated November 10, 2005 (“*November 10th LOI*”).

⁶ See Letter from Christopher D. Imlay, Esq., Counsel to Jones College, to Kenneth M. Scheibel, Jr., Attorney, and William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated December 1, 2005 (“*LOI Response*”).

⁷ See *Jones College*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 231 (Enf. Bur. 2009) (“*NAL*”).

and proposing a monetary forfeiture of \$5,000. On February 13, 2009, Jones responded to the *NAL*, alleging that the Bureau's ruling is erroneous and that the proposed forfeiture should be cancelled or reduced.⁸

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act,⁹ Section 1.80 of the Commission's Rules,¹⁰ and the Commission's forfeiture guidelines set forth in its *Forfeiture Policy Statement*.¹¹ In assessing forfeitures, Section 503(b) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require.¹² As discussed further below, we have examined Jones's response to the *NAL* pursuant to the aforementioned statutory factors, our Rules, and the *Forfeiture Policy Statement*, and find that cancellation is not appropriate in this case. Jones also argues in its response that the Bureau's *NAL* was time barred and we reject that claim. We find, however, that a partial reduction in the forfeiture amount is warranted because one announcement at issue in the *NAL* aired permissibly on behalf of Vystar Credit Union, a nonprofit organization.

A. The *NAL* was Timely Issued by the Enforcement Bureau.

5. First, we turn to Jones's argument that the *NAL* is time-barred.¹³ In support, Jones points to Section 503 of the Communications Act and Section 1.80 of the Commission's Rules and contends that "because the *NAL* was issued more than one year after the events complained of, the forfeiture is barred by statute and by Commission rules."¹⁴

6. The applicable statute, Section 503, provides in pertinent part:

No forfeiture penalty shall be determined or imposed against any person under this subsection if-- (A) such person holds a broadcast station license issued under Title III of this Act and if the violation charged occurred--(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or (ii) prior to the date of commencement of the current term of such license, whichever is earlier[.]¹⁵

⁸ See *Jones College*, Response to Notice of Apparent Liability for Forfeiture, filed February 13, 2009 ("*NAL Response*").

⁹ See 47 U.S.C. § 503(b).

¹⁰ See 47 C.F.R. § 1.80.

¹¹ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

¹² See 47 U.S.C. § 503(b)(2)(E).

¹³ See *NAL Response* at 3.

¹⁴ *Id.*

¹⁵ See 47 U.S.C. § 503(b)(6).

In *U.S. v. Evergreen Media Corporation of Chicago, AM* (“*Evergreen*”), the Court referred to the following excerpt from the Senate Commerce, Science and Transportation Committee Report to interpret Section 503:

For Broadcast licensee S.1547, as reported, makes the limitations period within which the FCC must issue a notice of forfeiture liability 1 year from the date on which the violation occurred, or within the current license term, *whichever is the longer period*, but not to exceed 3 years.¹⁶

The *Evergreen* Court found that “when Congress said earlier [in Section 503], they meant later.”¹⁷ Consequently, the Court found that a notice of apparent liability that was issued over one year after the violation, but before the expiration of the license term in which the violations occurred, was timely.¹⁸ Likewise, in the matter at hand, while the *NAL* was issued more than one year after the conduct in question, it was issued during the current license term in which the conduct occurred.¹⁹ Therefore, contrary to Jones’s argument, the *NAL* was timely issued.

B. Jones College Has Willfully and Repeatedly Broadcast Advertisements in Violation of Section 399B of the Act and Section 73.503 of the Commissions Rules.

7. Advertisements are defined by the Act as program material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product” of for-profit entities.²⁰ The pertinent statute specifically provides that noncommercial educational stations may not broadcast advertisements.²¹ Although contributors of funds to such stations may receive on-air acknowledgements, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors’ products, services, or businesses.²² Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.²³ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter. Consequently, the Commission expects that licensees exercise reasonable, “good faith” judgment in this area, and affords some latitude to the judgments of licensees who do so.²⁴

¹⁶ See *U.S. v. Evergreen Media Corporation of Chicago, AM*, 832 F. Supp. 1179, 1182 (N.D. Ill. 1993) (“*Evergreen*”). We note that the 1992 amendments to Section 503 deleted the phrase: “but not to exceed 3 years.” See Telecommunications Authorization Act of 1992, Pub. L. No. 102-538, 106 Stat. 3533 (codified as amended at 47 U.S.C. § 503 (b)(6)).

¹⁷ *Evergreen*, 832 F. Supp. at 1182.

¹⁸ See *id.*

¹⁹ See File No. BRED-20030930AXW (2004) (granting Jones’s application for a license renewal on January 22, 2004 for a term expiring on February 1, 2012).

²⁰ See 47 U.S.C. § 399b(a).

²¹ See *id.*

²² See Public Notice, *In the Matter of the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations* (1986), *republished*, 7 FCC Rcd 827 (1992) (“*Public Notice*”).

²³ See *id.*

²⁴ See *Xavier University*, Letter of Admonition, issued November 14, 1989 (Mass Med. Bur.), *recons. granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990) (“*Xavier*”).

8. In its *NAL* Response, Jones again argues that it had an oral contract with the producer of the program and not the sponsors of the program, and that the third-party producer, Mr. Norm Vincent, did not provide the Station direct consideration in exchange for airing the show.²⁵ Furthermore, the Licensee argues that the *NAL* incorrectly found that the programming supplied by Mr. Vincent constituted consideration because “educational programming cannot reasonably be considered remuneration.”²⁶ Consequently, Jones argues that the broadcasts were not made in exchange for consideration because none existed.²⁷

9. Jones points to no precedent to support its arguments. To the contrary, the *NAL*'s analysis is fully consistent with Commission precedent and policy that programming itself may constitute legal consideration for purposes of the statute.²⁸ In this case, we find, contrary to Jones's position, that it did receive consideration for the broadcast of the announcements in the form of the program material. The Commission has stated that “[c]onsideration . . . encompasses the contribution of programming material and funds, goods and/or services used for programming, as well as in kind contributions (*e.g.*, studio equipment) which frees station funds for programming purposes.”²⁹ Further, Jones's contention that educational programming cannot be considered consideration is unsupported. The Commission has drawn no distinction as to what type or quality of programming should constitute consideration for purposes of the statute.

10. Furthermore, the Commission has determined that lack of privity is not a bar to finding that consideration was exchanged for the broadcast of an announcement.³⁰ Thus, Jones is not absolved from liability simply because a third-party producer supplied the programming. In very limited instances, the Commission has considered third-party produced programming to be a mitigating, but not an exculpatory, fact. Those cases involved programming that was supplied automatically through a satellite feed and announcements that were broadcast only once.³¹ In this case, by Jones's own admission, the third-party supplier produced and recorded the program, “Swingtime,” approximately one week in advance of its ultimate broadcast, thus, the program was not aired inadvertently.³² Furthermore, Jones continued to broadcast the subject announcements in “Swingtime” multiple times over the Station and, as such, its violation was not *de minimis*. Therefore, on these facts, we do not consider mitigation appropriate.

²⁵ See *NAL Response* at 4.

²⁶ *Id.*

²⁷ See *id.*

²⁸ See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 911 (1982), *recons. granted in part*, Memorandum Opinion and Order, 97 FCC 2d 255 (1984) (“*1982 Policy Statement*”).

²⁹ See *1982 Policy Statement*, 90 FCC 2d at 911.

³⁰ See *Minority Television Project, Inc.*, Forfeiture Order, 18 FCC Rcd 26611, 26615 (Enf. Bur. 2003) (“*Minority Television*”) (finding that the Act does not require the consideration involved to be supplied directly by the sponsor or underwriter itself) (subsequent history omitted).

³¹ *Cf. Minority Television*, 18 FCC Rcd at 26616; *Window to the World Communications, Inc.*, Letter, 12 FCC Rcd 20239 (Mass Media Bur. 1997), Forfeiture Order, 15 FCC Rcd 10025 (Enf. Bur. 2000) (forfeiture reduced).

³² See *NAL Response* at 5.

11. Jones argues that the Station made “good faith” efforts to comply with the Commission’s Rules and that it, ultimately, terminated the program after receipt of the Commission’s November 10th LOI.³³ As noted in the *NAL*, post-facto remedial efforts are not mitigating.³⁴ Furthermore, as the *NAL* pointed out, many of the announcements at issue in the present case are the same as those for which Jones has been previously admonished.³⁵ Thus, we conclude that Jones has failed to establish that the *NAL* erred in its findings and we adopt the apparent conclusion contained in the *NAL* that the Station aired announcements that violated the Commission’s underwriting rules in exchange for consideration.

12. Jones argues that the Vystar Credit Union announcement was aired permissibly because the sponsor is a nonprofit organization.³⁶ Jones contends that announcements made on behalf of nonprofits are permissible pursuant to the Commission’s *1982 Policy Statement*.³⁷ There, the Commission stated that “public broadcasters are authorized to air promotional announcements sponsored by non-profit organizations.”³⁸ We note that in our November 10th LOI, we specifically asked Jones to identify, for each announcement, whether the requesting person or entity was a not-for-profit enterprise.³⁹ In its *LOI Response*, Jones failed to identify Vystar Credit Union as a nonprofit entity at that time.⁴⁰ The Licensee’s carelessness in its earlier filing resulted in an inaccurate conclusion in the *NAL* and wasted government resources. Although we will exclude the Vystar Credit Union announcement from our forfeiture calculation, we admonish Jones for its negligent misrepresentation in violation of Section 1.17 of our Rules,⁴¹ and caution the Licensee to exercise greater care in its responses to the Commission in the future.⁴²

³³ See *id.* at 4-6.

³⁴ See *NAL*, 24 FCC Rcd at 236; see also *Hispanic Broadcast System, Inc.*, Forfeiture Order, 20 FCC Rcd 12008, 12009 (Enf. Bur. 2005).

³⁵ See *NAL*, 24 FCC Rcd at 235; see also *Jones College*, Memorandum Opinion and Order, 18 FCC Rcd 24971 (Enf. Bur., Investigations & Hearings Div., 2003).

³⁶ See *NAL Response* at 6.

³⁷ See *id.*; see also *1982 Policy Statement*, Memorandum Opinion and Order, 90 FCC 2d at 900 n. 16.

³⁸ *1982 Policy Statement*, 90 FCC 2d at 901.

³⁹ See *November 10th LOI* at 4.

⁴⁰ See *LOI Response* at 3 (referring only to Fleet Landing and St. Catherine’s Laboure Manor as nonprofit organizations).

⁴¹ 47 C.F.R. § 1.17(a)(2) (prohibiting negligent misrepresentation in filings with the Commission).

⁴² See, e.g., *Benko Broadcasting Company*, Memorandum Opinion and Order, 3 FCC Rcd 6838, 6841 (Media Bureau, Video Services Div. 1988); *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18546 (1999), *recons. dismissed*, 15 FCC Rcd 10520 (admonishing licensee for carelessness in inaccurate statements made in a Commission filing). We find that an admonishment, and not a monetary sanction, is appropriate based on the particular circumstances of this case, but caution that future Section 1.17 violations by Jones College may result in the imposition of a monetary forfeiture. Cf. *Invision Industries, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 13095, 13099-104 (2008) (imposing a \$4,000 forfeiture for violation of Section 1.17(a)(2) for failing to provide accurate information concerning material information in an investigation that, if accurately produced in the first instance, would have been against its interest, unlike the instant case, where earlier accurate disclosure would have been exculpatory); *Syntax Brilliant*, Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323 (2008). In both *Invision* and *Syntax Brilliant*, in contrast to the instant case, the extent and relative gravity of the underlying substantive violations were more significant, the investigations more complex, and the overall impact of the apparent Section 1.17(a)(2) violations more serious.

13. Finally, Jones asserts that “no penalty should be imposed, and that, should any penalty have been justified, it should have been no more than a nominal amount less than \$500.”⁴³ We are unconvinced that either cancellation or a minimal forfeiture would be appropriate in light of Commission precedent in similar underwriting cases.⁴⁴ We find, however, that a partial reduction is appropriate based on our exclusion of the non-profit Vystar Credit Union announcement noted above. Weighing the single broadcast of the Vystar announcement against the overall number of announcements and their respective repetitions satisfies us that a \$500 reduction properly accounts for its exclusion. Accordingly, as a result of our review of Jones’s response to the *NAL*, and in view of the statutory factors and the *Forfeiture Policy Statement*, we affirm the *NAL* and issue a monetary forfeiture in the amount of \$4,500.

IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules,⁴⁵ Jones College **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,500 for willfully and repeatedly violating Section 399B of the Act, as amended, and Section 73.503(d) of the Commission’s Rules.⁴⁶

15. **IT IS FURTHER ORDERED** that, pursuant to the authority delegated in Section 0.111(a)(17) of the Commission’s Rules,⁴⁷ Jones College **IS ADMONISHED** for violating Section 1.17(a)(2) of the Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules⁴⁸ within thirty (30) days of the release of this *Forfeiture Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁴⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL/Account No.* and *FRN No.* referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the *NAL/Account Number* in block number 24A (payment type code). Jones will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and Anita.Patankar-Stoll@fcc.gov. Requests for full payment under an

⁴³ *NAL Response* at 7.

⁴⁴ See, e.g., *Southern Rhode Island Public Radio Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 8115 (Enf. Bur. 2000) (\$1,000 forfeiture imposed for a first time violation); *Southern Rhode Island Public Radio Broadcasting, Inc.*, Order and Consent Decree, 23 FCC Rcd 3769 (Enf. Bur. 2008) (directing Licensee to pay a settlement amount of \$7,500, which was based on among other factors, recognition of the licensee’s blemished prior history).

⁴⁵ See 47 U.S.C. § 503(b), 47 C.F.R. § 1.80.

⁴⁶ See 47 U.S.C. § 399b; 47 C.F.R. § 73.503(d).

⁴⁷ 47 C.F.R. § 0.111(a)(17) (delegating to the Enforcement Bureau the authority to issue admonishments).

⁴⁸ See 47 C.F.R. § 1.80.

⁴⁹ See 47 U.S.C. § 504(a).

installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

17. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent, by Certified Mail/Return Receipt Requested, to Jones College, 5353 Arlington Expressway, Jacksonville, Florida, 32211, and by regular mail to its counsel, Christopher D. Imlay, Esq., Booth, Freret, Imlay & Tepper, P.C., 14356 Cape May Road, Silver Spring, Maryland 20904-6011.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau